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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

craigslist, Inc., a Delaware corporation,
Plaintiff,

v.

Shui Yung Richard Tse, aka Eddie Temple,
d/b/a Craigsimp.com and
Shadydollars.com, Eddie Temple
Promotions LTD and Does 3 through 25,
inclusive,

Defendants.

Case No. CV 09 4738 JW

**PLAINTIFF CRAIGSLIST, INC.'S MOTION
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF DEFAULT
JUDGMENT AGAINST DEFENDANTS SHUI
YUNG RICHARD TSE, AKA EDDIE
TEMPLE AND EDDIE TEMPLE
PROMOTIONS LTD**

Date: March 7, 2011
Time: 9:00 am
Dept.: Courtroom 8, 4th Floor
Before: Honorable James Ware

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1 TO THE COURT, ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 7, 2011, at 9:00 a.m. or as soon thereafter as the
 3 matter may be heard before the Honorable James Ware, in the Courtroom of the United States
 4 District Court for the Northern District of California, Courtroom 8, 4th Floor, at 280 South 1st
 5 Street, San Jose, CA 95113, plaintiff craigslist, Inc. will, and hereby does, move the Court for
 6 default judgment against defendants Shui Yung Richard Tse, aka Eddie Temple ("Temple") and
 7 Eddie Temple Promotions Limited (collectively "Defendants"). The Clerk of the Court entered
 8 the default of Defendants on December 9, 2010.

9 craigslist, Inc. is entitled to judgment against Defendants on each of the claims pled in the
 10 Second Amended Complaint. craigslist, Inc. requests that this Court (1) enter a permanent
 11 injunction against Defendants restraining them from engaging in future violations of craigslist,
 12 Inc.'s rights; (2) award craigslist damages in an amount according to proof; (3) order the transfer
 13 of domain names used to infringe upon craigslist's rights; and (4) award craigslist its reasonable
 14 attorneys' fees and costs incurred in this action.

15 This Motion is based on this Notice of Motion, the Memorandum of Points and
 16 Authorities in support thereof, the supporting declarations with exhibits of Jeremy Buxbaum,
 17 David Weeks and James McCullagh filed concurrently herewith, and the pleadings and files in
 18 this action, and such other matters as may be presented at the hearing.

19 DATED: December 16, 2010

PERKINS COIE LLP

20 By: /s/ James McCullagh

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 22 craigslist, Inc.
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR DEFAULT JUDGMENT**

I. INTRODUCTION AND PROCEDURAL HISTORY

After filing its initial motion for default judgment in October 2010, craigslist learned that defendants Shui Yung Richard Tse, aka Eddie Temple (“Temple”) and Eddie Temple Promotions Limited (collectively “Defendants”) had registered and were operating a website for the purpose of stealing craigslist user log in credentials. As a result of this newly discovered information craigslist requested the transfer of domain names used by Defendants to injure craigslist. The Court dismissed the then pending motion for default judgment as premature because the First Amended Complaint did not include a prayer for relief that sought the transfer of domain names. craigslist amended the complaint, served Defendants, and default has again been entered against them. The following Motion for Default Judgment closely tracks the previously filed motion for Default Judgment (DE 42), but as a result of the amended allegations and prayer for relief contained in the Second Amended Complaint (“SAC”), this motion for default judgment also requests the transfer of craigslist-related domain names and a request for increased copyright infringement damages.¹

On October 5, 2009 and after other efforts to get Defendants to stop their injurious activities were unsuccessful, craigslist filed a Complaint against Eddie Temple d/b/a/ craigspimp.com and Shadydollars.com and Does 1-25 for (1) Copyright Infringement, 17 U.S.C. § 101 *et seq.*; (2) violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201, *et seq.*; (3) violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (4) violation of Cal. Pen. Code § 502; (5) Breach of Contract; (6) Inducing Breach of Contract; (7) Intentional Interference with Contractual Relations; and (8) Fraud. Electronic Case Filing Docket Entry (“DE”) 1.

¹ craigslist's original motion for default judgment relied on authority holding that the creation of a cache copy of a copyright-protected website constituted copyright infringement. *Ticketmaster L.L.C. v. RMG Technologies, Inc.*, 507 F. Supp. 2d 1096, 1111-12 (C.D. Cal. 2007). On December 14, 2010, the Ninth Circuit held that the process of copying copyrighted software into a computer's RAM memory does not give rise to a copyright claim that is based on exceeding the scope of a license, and there must be a nexus between the complained of act and the licensor's exclusive rights of copyright as set forth in 17 U.S.C. section 106. *MDY Indus. LLC, v. Blizzard Enter't, Inc.*, No. 09-15932 (9th Cir. Dec. 14, 2010). Based on this ruling, craigslist requests damages for copyright infringement in this motion based solely on Defendants' unauthorized copying and display of craigslist's copyrighted material on Defendants' craigspimptutorial.com and craigslistsecurity.com websites.

Defendants registered and used a series of websites, including craigspimp.com, craigspimptutorisal.com, craigsguide.com, and craigslistsecurity.com (“infringing websites”), to abuse craigslist by operating a fake craigslist website (“phishing website”) and by soliciting and paying people (“Affiliate Posters”) to post multiple false and misleading advertisements on craigslist’s website. SAC ¶¶ 77-81; 84; DE 42 (Supplemental Memorandum in Support of Motion for Default Judgment). Defendants profited handsomely from the scheme, which cluttered craigslist with fraudulent ads and thereby impaired the utility and efficacy of craigslist’s services for legitimate users, imposed undue costs and burdens on craigslist’s resources and personnel, and harmed craigslist’s reputation and goodwill. *Id.* ¶ 101.

Despite receiving an email copy of the summons and complaint on or about October 15, 2009, Temple refused to accept service by email. Instead, he publicly reassured his Affiliate Posters that the lawsuit would have no effect on his scheme, and continued to victimize craigslist while purposefully hiding his true identity and location. Declaration of Jeremy Buxbaum (“Buxbaum Decl.”) ¶ 3, Ex. A; Declaration of David Weeks (“Weeks Decl.”) ¶ 3, Ex. A.

craigslist was initially unable to locate and serve Temple, and consequently, on February 1, 2010, craigslist moved the Court to permit it to conduct discovery to obtain information that would help it locate Temple and identify additional defendants. DE 8. On February 9, 2010, the Court denied that motion. On March 25, 2010, after additional efforts to locate Temple were unsuccessful, craigslist requested permission to serve Temple by email. DE 16. While the motion for email service was pending, craigslist learned that Eddie Temple was an alias for Shui Yung Richard Tse, and that the infringing websites were registered to Tse’s company Eddie Temple Promotions Limited, for which “Eddie Temple” was listed as CEO. Buxbaum Decl. ¶ 4.

On May 14, 2010, craigslist filed a First Amended Complaint naming Shui Yung Richard Tse, aka Eddie Temple, and Eddie Temple Promotions LTD as defendants. DE 20. On May 20 and 21, 2010, craigslist served Temple both personally and pursuant to the Court’s May 20 order permitting service on Temple by email. DE 21, 22, 24. Temple then contacted craigslist and craigslist attempted to conduct discovery and briefly discussed settlement with Temple. Buxbaum Decl. ¶ 5. Temple remained defiant and refused to respond to craigslist’s requests or

1 participate in this litigation. Buxbaum Decl. ¶ 6. craigslist requested entry of default against
2 Temple, which was granted on June 18, 2010. Buxbaum Decl. ¶ 7; DE 25, 29.

3 On June 23, 2010, the court set September 20, 2010 as the hearing date for craigslist's
4 Motion for Default Judgment. Because craigslist had not been allowed the opportunity to
5 discover the full extent of Temple's acts, on July 6, 2010, craigslist requested leave to conduct
6 third party discovery in order to develop evidence of damages. DE 32. On August 13, 2010, the
7 Court granted craigslist's request for discovery and continued the hearing date for craigslist's
8 Motion for Default Judgment until November 15, 2010. DE 34, 35. After filing its Motion for
9 Default Judgment, craigslist learned that Defendants were operating a phishing website at
10 craigslistsecurity.com that was designed to mimic the appearance of craigslist's log in webpage in
11 order to trick people into providing Defendants with their email address and password. Weeks
12 Decl. ¶ 3, Exs. I, J. craigslist promptly submitted a supplemental memorandum detailing
13 Temple's continuing targeting of craigslist and requested the transfer of the infringing domain
14 names to craigslist. DE 42.

15 At the hearing, the Court was sympathetic to craigslist's plight, but indicated that it could
16 not order the transfer of the domain names because that relief was not expressly requested in the
17 First Amended Complaint. The Court then denied the motion as premature, and granted craigslist
18 leave to amend its complaint to add an additional request for relief to its Prayer. DE 46.
19 craigslist promptly filed its SAC and served Defendants by email and mail on November 19,
20 2010. DE 47, 48. Temple acknowledged receipt of the SAC and on December 9, 2010, default
21 was again entered when Defendants failed to respond. *See* DE 48 (Declaration of Service) ¶ 6,
22 Exs. C and D; DE 49, 51.

23 craigslist now moves for entry of default judgment pursuant to Rule 55 of the Federal
24 Rules of Civil Procedure. craigslist requests that the Court enter default judgment for liability on
25 all claims, issue a permanent injunction to stop and prevent Defendants and their agents from
26 continuing their injurious craigslist activities, award damages to craigslist under the copyright
27 infringement and breach of contract causes of action, order the transfer of the domain names
28 owned or operated by Defendants that contain "cl," "craig" or "craigslist" or that are used for

purposes that violate the terms of the permanent injunction entered by the Court in this litigation, and award attorneys' fees and costs to craigslist.

II. FACTUAL BACKGROUND

A. Craigslist's Copyright Protected Website and TOU

craigslist owns and operates the website www.craigslist.org, which provides, *inter alia*, an Internet-based local classified ad forum and service. SAC ¶¶ 23-29. The craigslist website allows users to post classified ads on webpages for a particular geographic area and within a specific category of products or services within that geographic area. *Id.* craigslist owns copyrights in and to its website, including, but not limited to, the post to classifieds, account registration and account log in expressions and compilations. SAC ¶ 67-69.

To restrict access to its webpages and protect its services, craigslist requires users to agree to its online Terms of Use ("TOU"), and employs technological security measures to enforce the TOU and to prohibit unauthorized access and use of craigslist webpages and services. SAC ¶¶ 30-36; 43-61. Furthermore, the TOU explicitly state that "[b]y using the Service in any way, you are agreeing to comply with the TOU." DE 47, Ex. A, ¶ 1.

B. Craigslist Security Measures

craigslist employs a number of technological security measures to control access and use of its website and services, including, but not limited to, the Complete Automated Public Turing test to tell Computers and Humans Apart ("CAPTCHA"). SAC ¶¶ 49-61. craigslist employs the CAPTCHA security device to control users' access to portions of the craigslist website for posting content and creating accounts. SAC ¶¶ 53-54. When a user seeks access to these webpages, the user is presented with a challenge-response test that appears in the form of a box containing partially obscured characters that the user must type into a separate box — this is the CAPTCHA. SAC ¶ 55. If the CAPTCHA is not timely solved, the user is denied access to these sections of

² As further explained in the Discussion section below, it is well established law that where default has been entered, all well-pled factual allegations of the complaint are taken as true. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

1 craigslist's website. SAC ¶ 56. craigslist also employs other security measures to limit the
 2 number of ads that can be posted from a single IP address³ or email address. Buxbaum Decl. ¶ 9.

3 **C. Defendants' Abuse, Infringement, and Violation of Craigslist's Website, Services and**
 4 **Rights**

5 **1. Defendants' Services That Violate craigslist's Website, Services and Rights**

6 Among other wrongful activities, Defendants developed, perpetrated, and profited from
 7 directing others to post thousands of fraudulent ads in multiple categories and multiple
 8 geographic areas on craigslist, in violation of the TOU. SAC ¶¶ 77-88. Defendants' scheme
 9 involved paying people to post fake advertisements on craigslist that pretended to be from a
 10 woman seeking a relationship or encounter with men. SAC ¶¶ 84-85; Weeks Decl. ¶ 3, Ex. B.
 11 Persons responding to these ads were tricked through one or more fraudulent emails to visit and
 12 subscribe to an adult dating website under the guise that this was required in order to verify the
 13 users' identity in advance of meeting in person. SAC ¶¶ 86- 88. Weeks Decl. ¶ 3, Ex. B.
 14 Defendants were paid for the traffic that they were responsible for routing to the adult dating
 15 websites. SAC ¶ 88. Defendants paid the people that posted the fake ads in a variety of ways
 16 including paying for each response that was received. Weeks Decl. ¶ 3, Ex. B. While Defendants
 17 profited from this fraudulent scheme, craigslist was damaged each time users were deceived by
 18 fraudulent ads posted on craigslist. Buxbaum Decl. ¶ 10; SAC ¶ 88; 101-109.

19 As part of their training manual for Affiliate Posters, Defendants created and displayed
 20 portions of craigslist's copyrighted website. SAC ¶ 91, 113; Weeks Decl. ¶ 3, Ex. B.
 21 Defendants' copying of craigslist's copyright-protected material was unauthorized. SAC ¶¶ 92-
 22 94, 115.

23 On June 10, 2010, some 8 months after craigslist filed this lawsuit, Defendants registered
 24 the domain name craigslistsecurity.com for the purpose of operating a craigslist phishing website
 25 to trick people into divulging their craigslist login credentials. Weeks Decl. ¶ 3, Exs. I, J.
 26 Defendants copied significant portions of craigslist's login webpage and displayed that
 27 information on craigslistsecurty.com along with false statements that craigslist was working to

28 ³ An Internet Protocol ("IP") address is a unique number that is assigned to each computer or
 device that is on the internet. Buxbaum Decl. ¶ 8.

1 improve security on its website and that the upgrade required all users to verify their accounts to
 2 “prevent [their] account from being disabled.” Weeks Decl. ¶ 3, Ex. I. In addition to copying
 3 text, Defendants also copied the color scheme, font and overall look and feel of the official
 4 craigslist login page. They even copied the links from craigslist’s website which, when selected,
 5 directed the user to official craigslist webpages thereby increasing the likelihood that even a
 6 suspicious user would be tricked into believing that the craigslistsecurity.com website was an
 7 official craigslist website. Weeks Decl. ¶ 3 Exs. I, K.

8 Finally, once a user entered the requested log-in information into craigslistsecurity.com,
 9 Defendants took the additional step of falsely confirming that the account had been verified
 10 before redirecting the user to the genuine craigslist site. Weeks Decl. ¶ 3, Ex. L. As a result,
 11 unsuspecting users may never have realized that they just provided their login credentials to
 12 Defendants, who then had unfettered access to post ads on craigslist from the user’s account or
 13 use the information in furtherance of other nefarious schemes.

14 **2. Defendants Knowingly and Willfully Violated craigslist’s Rights**

15 Just as there can be no mistake that Defendants’ theft of craigslist log-in credentials
 16 through the use of craigslistsecurity.com was intentional, there can also be no mistake that
 17 Defendants knew they were violating craigslist’s rights from the very beginning. For example,
 18 through the craigspimp.com website, Defendants disclosed the fraudulent nature of the scheme:
 19 “You are posting ads pretending to be a girl seeking a man. The idea is to get men to respond to
 20 your ad” and “Obviously, the more cities you promote in, and the more ads you can post, the
 21 more replies you will receive...and the more money you will make. But Craigslist makes it
 22 difficult to post ads in cities far from your geographic location.” Weeks Decl. ¶ 3, Ex. B.
 23 Defendants instructed their Affiliate Posters to regularly change their IP addresses and to use
 24 multiple email addresses to post ads on craigslist, in circumvention of craigslist’s security
 25 measures. Weeks Decl. ¶ 3, Ex. C. Defendants acted with complete disregard for craigslist’s
 26 rights, at one point stating on one of their websites, in reference to their Internet “marketing”
 27 business, “Look, this stuff isn’t ethical...it’s definitely not nice...and some of it is just barely
 28 legal. But it works. It works fast.” Weeks Decl. ¶ 3, Ex. D.

Furthermore, craigslist made three separate attempts to contact Temple in November and December of 2008 and demanded that he cease his wrongful activity immediately. Buxbaum Decl. ¶¶ 11, 12; Ex. A. Despite these repeated attempts to have Defendants stop their injurious activities, they continued unabated. On October 5, 2009, craigslist filed the Complaint in this action. DE 1. Shortly thereafter, Temple contacted craigslist, acknowledged receiving the prior cease and desist letters as well as the Complaint and refused to stop his activity stating: “sue me all you want” and “keep on wasting your money.” Buxbaum Decl. ¶ 13, Ex. A.

Defendants, believing that they had completely concealed their true identity and location then refused to accept service by email by stating: “I don’t accept summons by email; you will need to serve me in person.” Buxbaum Decl. ¶ 14; Ex. A. Indeed, Defendants then continued to operate craigspimp.com and reassured their Affiliate Posters that they had no intention to stop craigspimp.com or its related schemes. Weeks Decl. ¶ 3; Ex. A.

Eventually craigslist identified and served Defendants, who thereafter appeared to temporarily stop their craigslist activity by directing the craigspimp.com domain name to craigslist’s TOU. Buxbaum Decl. ¶ 15. But to this day, Defendants have refused to transfer the craigspimp.com and other craigslist related domain names to craigslist and they continue to remain in control of the infringing websites. Buxbaum Decl. ¶ 16, Ex. B. Indeed, Defendants recently reactivated the craigspimp.com domain. Buxbaum Decl. ¶ 17.

There can be no mistake that Defendants’ actions were knowing and willful.

D. Defendants Are Unjustly Enriched by Their Abuse, Infringement, and Violation of Craigslist’s Website, Services and Rights

Defendants refusal to participate in this litigation has significantly disadvantaged craigslist’s ability to discover and recover damages attributable to the full extent of Defendants’ conduct. Buxbaum Decl. ¶ 18. However, the evidence that craigslist has obtained shows that Defendants profited handsomely from their illegal endeavors. On their websites Temple boasts that he made over \$4,582,700 using his techniques. Weeks Decl. ¶ 3, Ex. E. He also stated: “...I make over \$25,000 per month just posting little classified ads” and “thousands of people around the world use [craigspimp.com] to make an extra \$250-\$500/day posting ads on [c]raigslist.”

Weeks Decl. ¶ 3, Exs. E, A. Even the partial and admittedly incomplete financial records that craigslist was able to obtain show that just one of the accounts used by Defendants to process payments recorded over \$400,000 in transactions in less than 2 years. Weeks Decl. ¶ 8, Ex. M.

E. Craigslist Is Suffering Monetary and Intangible Injuries From Defendants' Actions

craigslist has suffered and continues to suffer monetary losses for the increased equipment, bandwidth, and personnel required to maintain the efficacy of its systems and services when they are flooded with unauthorized posts for which Defendants and their services are responsible. SAC ¶¶ 101-104. More importantly, craigslist has suffered harm to its reputation and goodwill as a result of Defendants' disruption of the proper functioning of craigslist's services for legitimate users. SAC ¶¶ 105-106. Defendants encouraged and enabled those working for them to violate craigslist's terms, copyrights, and other legal rights. SAC ¶ 84. Moreover, Defendants offered automated posting and CAPTCHA circumvention products and services to their workers to enable them to auto-post hundreds of ads on craigslist and unfairly compete against legitimate users in craigslist marketplaces. Weeks Decl. ¶ 3, Ex. F. craigslist is founded on fairness and simplicity in operation. SAC ¶ 29. When Defendants disrupt these pillars, craigslist no longer operates like it should, and users become frustrated. SAC ¶ 74-76; 106.

III. DISCUSSION

Rule 55(a) of the Federal Rules of Civil Procedure states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). After a defendant's default is entered by the court, the well-pled factual allegations of the complaint are taken as true. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002); *see also Microsoft Corp. v. McGee*, 490 F. Supp. 2d 874, 878 (S.D. Ohio 2007), *citing Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 110-11 (6th Cir. 1995) (holding that once a default is entered against a defendant, "that party is deemed to have admitted all of the well pleaded allegations in the complaint"). Where the factual allegations of the complaint provide a sufficient legal basis for entry of a default judgment, the court then conducts an inquiry to ascertain the amount of damages. *See Sony Computer Entm't Am., Inc. v. Divineo, Inc.*, 457 F. Supp. 2d 957

(N.D. Cal. 2006); *see also* *Arista Records, Inc. v. Beker Ent., Inc.*, 298 F. Supp. 2d 1310, 1311-12 (S.D. Fla. 2003).

A. Craigslist Is Entitled to Default Judgment

The Ninth Circuit has enumerated the following factors for a district court to consider when determining whether to grant default judgment:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "In applying this discretionary standard, default judgments are more often granted than denied." *PepsiCo v. Triunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999). In this case, the enumerated factors weigh heavily in favor of granting default judgment and awarding craigslist injunctive and monetary relief.⁴

1. Prejudice to craigslist

As to factor one, craigslist would unquestionably suffer prejudice if the default judgment is not entered because craigslist would be without recourse to prevent Defendants, their employees, representatives, and agents from infringing craigslist's rights in the future and without recourse to recover for the harm and damages Defendants have caused craigslist already. *See PepsiCo v. Cal. Sec. Cans.*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) ("[p]otential prejudice to [plaintiff] favors granting a default judgment."); *Elektra Enter. Group v. Avery*, 2007 WL 2023545, at *1 (E.D. Cal. July 11, 2007) (recognizing that plaintiff would be denied the right to

⁴ As alleged in the SAC, this Court has jurisdiction over craigslist's claims. First, the Court has jurisdiction under the Ninth Circuit standard for personal jurisdiction. Defendants availed themselves of California by selling products and services on-line that were available to California residents; they knowingly infringed the copyrights of a California based company; and the Court's jurisdiction is reasonable. *See Cybersell v. Cybersell*, 130 F.3d 414, 419 (9th Cir. 1997), *Stomp, Inc. v. NeatO, LLC*, 61 F.Supp.2d 1074, 1078 (C.D. Cal. 1999), *Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc.*, 106 F.3d 284, 289 (9th Cir. 1997), *rev'd on other grounds Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 118 (1998); *Haisten v. Grass Valley Medical Reimbursement*, 784 F.2d 1392, 1397 (9th Cir. 1986). Second, the Court has jurisdiction because Defendants agreed to craigslist's TOU, which identify California as the appropriate forum for this suit. *See* SAC ¶¶ 95, 97; Ex. A (TOU) ¶ 18; *see also Zenger-Miller, Inc. v. Training Team, GmbH*, 757 F. Supp. 1062, 1069 (N.D. Cal. 1991).

judicial resolution of the claims presented and would be without recourse for protection of its intellectual property rights if default judgment was not granted).

2. Merits of the Substantive Claims and Sufficiency of the Complaint

Eitel factors two and three (merits of plaintiff's substantive claim and sufficiency of the complaint) simply "require that a plaintiff state a claim on which [it] may recover." *Cal. Sec. Cans.*, 238 F. Supp. 2d at 1175 (citations and quotations omitted); *see also Philip Morris USA Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003). craigslist's SAC provides detailed factual allegations in support of each element of the alleged causes of action, and states a claim as to all of them.

a. Copyright infringement, 17 U.S.C. § 101, et seq.

To demonstrate copyright infringement, a plaintiff need only show: (1) ownership of a valid copyright; and (2) copying of original elements of the work. *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).

craigslist's website and specifically its ad submission and account creation features are works of authorship protected by craigslist's registered copyrights. SAC ¶¶ 66-69, 111. Defendants are liable for copyright infringement for copying craigslist's login page and using and displaying that copyright-protected material on their craigslistsecurity.com page. SAC ¶ 113. As discussed above, Defendants operated a phishing website at craigslistsecurity.com, where they copied significant portions of craigslist's login webpage, including text, color scheme, font and overall look and feel of the official craigslist login page. *See* DE 42; Weeks Decl. ¶ 3, Exs. I, K. Furthermore, as part of their detailed instructions to Affiliate Posters, Defendants included unauthorized copies of the craigslist website in certain promotional and training materials. Weeks Decl. ¶ 3, Ex. B (containing copies of portions of the craigslist website as part of Defendants' instruction manual for Affiliate Posters). Defendants' copies and/or derivative works are substantially similar to craigslist's original copyright-protected website. SAC ¶ 114. The copies and/or derivative works created by Defendants are unauthorized. SAC ¶ 115. The SAC thus states a claim for copyright infringement.

1 **b. Digital Millennium Copyright Act violation, 17 U.S.C. § 1201, et seq.**

2 As explained in the SAC, craigslist users must solve a CAPTCHA before they are able to
 3 access copyrighted portions of the craigslist website for posting content and creating accounts.
 4 SAC ¶¶ 53-56. As alleged in the SAC, Defendants circumvented craigslist security measures to
 5 assist them or their affiliates in posting ads on craigslist. SAC ¶¶ 89, 122-131. Specifically,
 6 Defendants offered their Affiliate Posters a copy of EasyAdPosterDeluxe, a software program
 7 used for auto-posting and CAPTCHA circumvention. Weeks Decl. ¶ 3, Exs. F, H. Defendants
 8 also offered to buy their Affiliate Posters unlimited CAPTCHA credits, allowing them to
 9 circumvent craigslist security measures an unlimited number of times. Weeks Decl. ¶ 3, Ex. F.
 10 These CAPTCHA circumvention devices that Defendants offered to distribute to craispimp
 11 users enable users' unauthorized access to the posting and account creation portions of the
 12 craigslist website that they could not otherwise access without individually and manually solving
 13 the CAPTCHAs. SAC ¶¶ 89, 122-131.

14 Indeed, these products and services were designed and produced specifically and
 15 primarily to circumvent craigslist's CAPTCHA security measures in order to enable users to
 16 access portions of the website that they otherwise could not; they have no commercially
 17 significant purpose or use other than to circumvent these security measures; and they were
 18 offered by Defendants for use in circumventing craigslist's CAPTCHA measures. SAC ¶ 126-
 19 128. The SAC thus states a claim for violation of the DMCA, specifically, 17 U.S.C.
 20 § 1201(a)(2). *See Ticketmaster L.L.C. v. RMG Technologies, Inc.*, 507 F. Supp. 2d 1096, 1111-12
 21 (C.D. Cal. 2007) (holding plaintiff likely to prevail on claims that defendant's software
 22 circumventing plaintiff's requirement that users provide certain information to access copyrighted
 23 material violated 17 U.S.C. § 1201(a)(2)); *see also craigslist v. Hubert*, No. 08-05067 JW, Docket
 24 Item No. 63 (N.D. Cal., April 15, 2010) (Order Granting Plaintiff's Motion for Default Judgment)
 25 (Attached as Weeks Decl. ¶ 9, Ex. N) (awarding statutory damages under the DMCA based on
 26 offers of CAPTCHA credits).

c. Computer Fraud and Abuse Act violation, 18 U.S.C. § 1030

Defendants also violated the sections of the Computer Fraud and Abuse Act (“CFAA”) alleged in the SAC, 18 U.S.C. § 1030(a)(2)(C) (accessed craigslist’s computers without authorization or in excess of authorization and obtained information); 1030(a)(4) (accessed craigslist’s computers without authorization or in excess of authorization in furtherance of fraud); 1030(a)(5)(A) (accessed craigslist’s computers without authorization or in excess of authorization and caused damage). Defendants intentionally accessed craigslist’s computers (involved in interstate commerce) to develop, implement, update, support, test and use their website and services, which were designed to deceive people into visiting and joining adult dating websites. SAC ¶¶ 91-92, 132-139. Defendants’ activities were not authorized or exceeded authorization because they were expressly unauthorized by craigslist’s cease and desist demands, and included measures to circumvent craigslist’s technological restrictions to control access to and use of its website. Buxbaum Decl. ¶ 19, Ex. A. There can be no dispute that Defendants knew their activities were unauthorized, that they were aware of craigslist’s technical measures to limit access by IP address, that they instructed their Affiliate Posters to regularly change their IP address and to use multiple email accounts to post ads, and that they would have had to test these circumvention measures themselves to ensure their efficacy. Weeks Decl. ¶ 3, Exs. B (noting that craigslist filters by IP address), C (instructing users to regularly change IP addresses). The amount of these losses and damages (discussed above) exceed \$5,000. SAC ¶¶ 136-137.

d. Cal. Pen. Code § 502 violation

The SAC establishes liability under Cal. Pen. Code § 502. Defendants accessed and used the craigslist website without permission in order to obtain information, add information to the craigslist website, and develop, update, operate, and maintain their fraudulent schemes which harmed craigslist (as summarized above). SAC ¶¶ 91-92, 140-152. Separate and apart from the notice Defendants received that their access and use of craigslist’s services was unauthorized, Defendants’ scheme violated craigslist’s technological restrictions to control access to its website, including the use of measures that limit the volume of ads posted from a single IP address or a single email address. Specifically, Defendants instructed their Affiliate Posters to regularly

change their IP address and to use multiple email accounts to post ads, and Defendants would have had to test these circumvention measures themselves to ensure their efficacy. Weeks Decl. ¶ 3, Ex. C. Defendants' actions to evade craigslist's access limitations are sufficient to find violations of Cal. Pen. Code § 502. *See Facebook, Inc. v. Power Ventures, Inc.*, No. C 08-05780, 2010 WL 3291750, at *11-12 (N.D. Cal. July 20, 2010) (finding that "accessing or using a computer, computer network, or website in a manner that overcomes technical or code-based barriers is 'without permission,' and may subject a user to liability under Section 502").

e. Breach of contract and inducing breach of contract

The SAC states a claim for breach of contract. *See Careau & Co. v. Security Pacific Business Credit, Inc.*, 222 Cal. App. 3d 1371, 1388 (Cal. App. 1990) (discussing the elements of breach of contract). The TOU are a contract; Defendants breached them, including sections 7(i) (posting false or deceptive ads), 7(k) (affiliate marketing), 7(m) (linking to commercial websites in categories other than services), 7(x) (unauthorized access to computers and disruptive activity), and 8 (acting as a "Posting Agent," causing content to be posted on behalf of others) and craigslist suffered harm. SAC ¶¶ 153-166; *see Molnar v. 1-800-Flowers.com, Inc.*, No. 08-Cv-0542, 2008 WL 4772125, at *7 (C.D. Cal. Sept. 29, 2008) (denying motion to dismiss breach of contract claim because "courts have held that a party's use of a website may be sufficient to give rise to an inference of assent to the Terms of Use contained therein"); *Ticketmaster*, 507 F. Supp. 2d at 1107 (granting preliminary injunction for breach of contract claim based on use of website outside the terms of use). Defendants were subject to the TOU because the TOU apply to any use of the craigslist site (SAC, Ex. A, ¶ 1), and Defendants, at a minimum, would have posted ads on craigslist in order to develop and test their scheme, and in so doing explicitly agreed to the TOU. SAC ¶¶ 91, 95, 158-161. As previously detailed, Defendants' activities included posting and inducing their Affiliate Posters to post fraudulent ads on their behalf for the purpose of deceiving craigslist and its users into believing that the ads were legitimate.

f. Intentional interference with contractual relations

The SAC states a claim for intentional interference with contractual relations. *See Online Policy Group v. Diebold, Inc.*, 337 F. Supp. 2d 1195, 1205 (N.D. Cal. 2004); *Shamblin v. Berge*,

1 166 Cal. App. 3d 118, 122-23 (Cal. Ct. App. 1985). The SAC identifies the TOU as valid and
 2 existing contracts between craigslist and craigslist users, SAC ¶¶ 30-33, 177-78, and explains
 3 Defendants' knowledge of the TOU and Defendants' intent and intentional acts to breach or
 4 disrupt the contractual relationship between craigslist and its users by inducing users to use
 5 Defendants' craigspimp website to post fake ads in violation of craigslist's TOU. SAC ¶¶ 84,
 6 100, 176-183. The SAC also alleges actual breach or disruption of the TOU contracts when users
 7 were induced by Defendants to post fake ads on craigslist in violation of the TOU. SAC ¶¶ 95-
 8 96, 153-166. And it alleges resulting harm and damage to craigslist. SAC ¶¶ 101-109, 165, 181.

9 **g. Fraud**

10 "Under California law, the indispensable elements of a fraud claim include a false
 11 representation, knowledge of its falsity, intent to defraud, justifiable reliance, and damages."
 12 *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003) (quotation and citation
 13 omitted). The SAC establishes each element with particularity. The SAC alleges false
 14 representations and the contents of and parties to the false representations—Defendants'
 15 statements to craigslist that they would comply with the TOU when they had no intention of
 16 complying and did not comply. SAC ¶¶ 96, 98-100, 185-187. The SAC also alleges the times
 17 and locations of the misrepresentations — they are each time Defendants assented to the TOU on
 18 the craigslist website by clicking the "ACCEPT terms of use" option before creating a user
 19 account or posting content and by using the website. SAC ¶ 96. The SAC alleges knowledge of
 20 the falsity — Defendants knew they had no intention of complying with the TOU when they
 21 represented that they would abide by them. SAC ¶¶ 96, 98, 190-91. The SAC alleges intent to
 22 defraud — Defendants intended to gain unauthorized access to the craigslist website and services
 23 to develop, update, operate, and maintain their illicit craigspimp website and program.
 24 SAC ¶¶ 98-100, 191-92. The SAC alleges justifiable reliance—craigslist reasonably relied on
 25 Defendants' affirmative assent to the TOU to grant access to the craigslist website and services.
 26 SAC ¶ 198. And the SAC alleges damages — Defendants' fraud has resulted in the posting of
 27 thousands of fake ads on craigslist, which has caused and is causing craigslist economic harm to
 28 combat as well as intangible reputational harm with legitimate craigslist users. SAC ¶ 193.

1 **h. Defendants' violations were knowing, deliberate, intentional, willful,**
 2 **and undertaken with conscious disregard for craigslist's rights**

3 Defendants' actions giving rise to the claims pled in the SAC were undertaken knowingly,
 4 deliberately, intentionally, willfully, and with conscious disregard for craigslist's rights (referred
 5 to collectively as "willfully" or "willfulness" below for simplicity). The allegations of the SAC,
 6 which are taken as true, establish this willfulness. *See* SAC ¶¶ 98; 118; 163; *see also Fair*
 7 *Housing of Marin v. Combs.*, 285 F.3d 899, 906 (9th Cir. 2002). Moreover, willfulness can be
 8 inferred from a defendant's failure to defend. *Castworld Prods.*, 219 F.R.D. at 500; *see Fallaci v.*
 9 *New Gazette Literacy Corp.*, 568 F. Supp. 1172, 1173 (S.D.N.Y. 1983); *Arista Records, Inc.*, 298
 10 F. Supp. 2d at 1313 (the court may infer willful infringement because of default). In this case,
 11 willfulness may and should also be inferred from Defendants' efforts to conceal their identity and
 12 location - going so far as to use a fictitious name and fictitious addresses.

13 As alleged in the SAC, Defendants accessed and copied the craigslist site with the
 14 intention of violating the TOU. SAC ¶ 96. Defendants also continued their activity after
 15 receiving a cease and desist demand in October 2008 and for more than 7 months after being
 16 sued. Buxbaum Decl. ¶ 20. SAC ¶¶ 95-96; 158-161. There can be no doubt that Defendants
 17 deliberately, willfully, and intentionally violated the law and harmed craigslist. *See Microsoft*
 18 *Corp. v. McGee*, 490 F. Supp. 2d at 878 (on default, court looked to allegations in complaint and
 19 held that defendant willfully violated Copyright Act); *Divineo*, 457 F. Supp. 2d 957 (same).

20 **3. Sum of Money at Stake**

21 As for the fourth *Eitel* factor, the sum of money at stake is not inconsequential, but neither
 22 is the harm caused by Defendants' knowing and deliberate abuse of craigslist and Defendants'
 23 efforts to conceal their identify and location. Defendants' misconduct has cost craigslist a
 24 substantial amount of resources for the increased equipment, bandwidth, and personnel required
 25 to maintain the efficacy of its systems and services when they are flooded with unauthorized posts
 26 for which Defendants and their services are responsible. Moreover, Defendants' deliberate
 27 concealment and refusal to stop their wrongful activity even after receiving multiple written
 28 demands from craigslist, and their unwillingness to participate in this litigation, required craigslist

1 to expend substantial resources to sue, identify and locate them, along with the resources required
2 to seek a default judgment with limited information.

3 **4. The Possibility of Disputed Material Facts and Whether Default was Due to** 4 **Excusable Neglect**

5 Pursuant to the fifth and sixth *Eitel* factors, there is virtually no possibility of a dispute as
6 to material facts or of excusable neglect for the default in this case. *See Castworld Products*, 219
7 F.R.D. at 500-01. The factual allegations of the SAC, now admitted, and the supporting evidence
8 provided in the declarations and exhibits with this motion show — with no room for
9 equivocation — that Defendants engaged in the acts alleged. Defendants were served with the
10 SAC, acknowledged receipt of the SAC, and communicated with craigslist’s counsel. DE 48.
11 There is no evidence that Defendants’ default is due to excusable neglect.

12 **5. Policy Favoring Decisions on the Merits**

13 As for the seventh *Eitel* factor (policy in favor of decisions on the merits), Defendants’
14 refusal to appear, respond, or otherwise defend against craigslist’s complaint, as well as their
15 active efforts to hide, makes a resolution on the merits impossible. *Cal. Sec. Cans.*, 238 F. Supp.
16 2d at 1177 (“Under Fed. R. Civ. P. 55(a), termination of a case before hearing the merits is
17 allowed whenever a defendant fails to defend an action.”).

18 Pursuant to *Eitel*, craigslist is entitled to default judgment against Defendants establishing
19 liability on all of the causes of action alleged in the SAC.

20 **B. Craigslist Is Entitled to Appropriate Relief**

21 With default judgment justified, the Court next conducts an inquiry into appropriate relief,
22 including the amount of damages. *See, e.g., 3A Entm’t Ltd. v. Constant Entm’t, Inc.*, No. C 08-
23 01274 JW, 2009 WL 248261, at *6 (N.D. Cal. Jan. 30, 2009). craigslist seeks injunctive and
24 monetary relief, and an order directing transfer of Defendants’ craigslist-related domain names.

25 **1. Injunctive Relief Is Appropriate and Necessary**

26 At a minimum, craigslist is entitled to injunctive relief pursuant to Defendants’ liability
27 for copyright infringement, 17 U.S.C. § 502(a) and breach of contract. The Court’s power to
28 grant a permanent injunction against Defendants and those acting in concert with them is

1 therefore broad. For example, the Court may “grant temporary and final injunctions on such
 2 terms as it may deem reasonable to prevent or refrain from infringement of a copyright.” 17
 3 U.S.C. § 502(a). Indeed, courts “regularly issue injunctions as part of default judgments.” *Arista*
 4 *Records*, 298 F. Supp. 2d at 1314; *see also Castworld Prods.*, 219 F.R.D. at 502; *Jackson v.*
 5 *Sturkie*, 255 F. Supp. 2d 1096, 1011 (N.D. Cal. 2003).

6 Defendants developed and marketed the craigspimp service, registered and operated the
 7 craigslist phishing website, craigslistsecurity.com, and offered autoposting and CAPTCHA
 8 circumventing software that violated craigslist’s copyrights and violated the TOU. SAC ¶¶ 77-
 9 100. They engaged in such conduct despite being fully aware that it violated craigslist’s TOU
 10 and legal rights. SAC ¶¶ 98, 100. Defendants’ conduct has damaged craigslist, and caused and
 11 continues to cause irreparable and incalculable harm and injury to craigslist. SAC ¶¶ 101-109.
 12 As explained in the SAC, hard costs to craigslist to meet the increased burdens on its equipment
 13 and personnel from Defendants’ conduct are substantial. SAC ¶¶ 102-104. Moreover, craigslist
 14 has suffered lost reputation and goodwill and has lost users as frustration with the impacts from
 15 Defendants’ and other’s misconduct has grown and craigslist has struggled to stop them. SAC
 16 ¶¶ 105-106.

17 From the onset of this matter Defendants were evasive, using a fictitious name and
 18 addresses, and operating with an utter disregard for craigslist’s rights. If not permanently
 19 enjoined, they will continue to violate craigslist’s rights again. craigslist therefore requests that
 20 the Court enter a permanent injunction against Defendants, and those acting in concert with them,
 21 as set forth in the SAC's Prayer for Relief ¶ 1 and as included in the Proposed Order filed with
 22 this Motion.

23 **2. Monetary Damages Are Also Appropriate and Necessary**

24 craigslist has been damaged and Defendants have wrongly profited from their abuse of
 25 craigslist. However, Defendants’ refusal to participate in this litigation has severely prejudiced
 26 craigslist’s ability to quantify the full extent of Defendants’ wrongful activity. Despite the
 27 inability of craigslist to present a complete picture of damages, it has nevertheless adduced
 28

1 sufficient evidence to establish that it is entitled to statutory damages for Defendants' copyright
2 infringement and damages for their breach of contract. 17 U.S.C. § 504(c).

3 **a. Award of Copyright Act statutory damages**

4 The Copyright Act allows a successful plaintiff to elect to recover statutory damages as an
5 alternative to actual damages. 17 U.S.C. § 504(c). Statutory damages may be especially fitting in
6 default judgment cases, like this one, because information needed to prove actual damages may
7 be within the defendant's control and not disclosed. *Microsoft Corp.*, 490 F. Supp. 2d at 882.
8 The Copyright Act authorizes statutory damages of up to \$30,000 per work for infringement, but
9 if the infringement is willful, the award can be augmented to \$150,000. 17 U.S.C. § 504(c).
10 Courts have wide discretion to determine the appropriate level of statutory damages within this
11 range. *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990).

12 As discussed above, Defendants' infringement should be deemed willful, based on the
13 allegations in the SAC and Defendants' failure to defend. *See Castworld Prods.*, 219 F.R.D. at
14 500 (holding that defendant willfully infringed plaintiff's trademark based on plaintiff's
15 allegations of willful infringement and defendant's "failure to comply with the judicial process or
16 to participate in any way in the present litigation"); *Arista Records*, 298 F. Supp. 2d at 1313 (the
17 court may infer willful infringement because of default). Thus, given the significant injury
18 resulting from Defendants' infringing activity as well as their willful and deliberate continuing
19 infringement, craigslist is entitled to statutory damages up to \$150,000 per infringement.

20 While Defendants' default prevented craigslist from learning the total number of
21 infringements for which Defendants are liable, there can be no doubt that Defendants are liable
22 for at least two acts of infringement: one act of infringement for the unauthorized creation of a
23 derivative work of craigslist's account verification page and its display on Defendants' phishing
24 website at craigslistsecurity.com, which infringed the accounts.craigslist.org 2008 copyright
25 (Reg. No. TX0006866658), and one act of infringement for the unauthorized copying of
26 craigslist's website for the use and display on Defendants' craigspimptutorial.com website, which
27 infringed the Craigslist website 2006 copyright (Reg. No. TX0006866657). *See* SAC ¶ 69;
28 Weeks Decl. Exs. B, I; 17 U.S.C. § 106 (exclusive rights in copyrighted works). craigslist

therefore requests an award of \$300,000, which represents the maximum statutory damages for just two instances of copyright infringement.

b. Award of liquidated damages for breach of contract under craigslist's TOU

Where actual damages are difficult to determine, the parties to a contract are permitted to agree to an amount of liquidated damages. *Utility Consumers' Action Network, Inc. v. AT&T Broadband of Southern Cal., Inc.*, 135 Cal. App. 4th 1023, 1028 (2006); *MySpace, Inc. v. The Globe.com, Inc.*, No. CV 06-3391, 2007 WL 1686966 at *10 (Feb. 27, 2007 C.D. Cal.). Under California law, liquidated damages clauses are enforceable where: (1) damages from a breach would be impractical or extremely difficult to determine with certainty; and (2) the amount represents a reasonable estimation of what such damages might be. *Id.*

craigslist recognized that it would often be difficult to quantify actual damages caused by activities that violate its TOU and it therefore included a liquidated damages section in the TOU. SAC, Ex. A ¶ 19. Specifically, the TOU state:

You understand and agree that, because damages are often difficult to quantify, if it becomes necessary for craigslist to pursue legal action to enforce these Terms, you will be liable to pay craigslist the following amounts as liquidated damages, which you accept as reasonable estimates of craigslist's damages for the specified breaches of these terms:

SAC, Ex. A ¶ 19. Indeed, the damages suffered by craigslist as a result of Defendants' fraudulent posting scheme provide an excellent example of just how difficult it is to quantify damages from certain violations of the TOU. Defendants' activities were widespread and intentionally designed to evade detection by craigslist. Weeks Decl. ¶ 3, Ex. B, C. The posting of fraudulent ads on craigslist improperly consumed craigslist resources that were intended for legitimate ads, clogged certain categories with fraudulent ads, displaced legitimate ads, and tricked innocent craigslist users into visiting adult dating websites and paying for services under the belief that this was required to continue their online discussion with a real person, when in fact the person described in the ad did not exist. Each of these effects impact fundamental aspects of craigslist's business and if not stopped, would have significant and lasting effects on craigslist's business, reputation,

1 and goodwill. However, these injuries are very difficult to quantify and for that reason, craigslist
2 included, and Defendants agreed to, the liquidated damages provisions contained in the TOU.

3 Through the TOU, the parties agreed that liquated damages of \$100 for each ad posted in
4 violation of the TOU was a reasonable estimate of craigslist's damages for the specified breaches.
5 SAC, Ex. A ¶ 19. In addition, the TOU provide for the same amount of damages for each item
6 that a Posting Agent⁵ is responsible for posting, and the Principal who engages the Posting Agent
7 agreed to pay craigslist an additional \$100 for each ad posted by the Posting Agent on behalf of
8 the Principal in violation of the TOU. SAC, Ex. A ¶ 19e. Because the Affiliate Posters were
9 posting ads for Defendants' benefit the Affiliate Posters are "Posting Agent(s)" under the TOU,
10 and, consequently, Defendants are "Principal(s)" under the TOU. As such, Defendants are liable
11 for \$100 for each ad posted in violation of the TOU and an additional \$100 for each ad posted on
12 their behalf by a Posting Agent. SAC ¶¶ 78-79, 83-84, 171. Therefore, Defendants are liable for
13 \$200 for each ad posted in violation of the TOU. The additional liquidated damages resulting
14 from the use of one or more Posting Agents is reasonable because it reflects the increased
15 damages and difficulty in identifying and stopping the prohibited behavior caused by having other
16 people post fake ads on behalf of Defendants.⁶

17 As part of the damages discovery authorized by the Court, craigslist received a transaction
18 log for a PayPal account used by Defendants to pay Affiliate Posters. PayPal was just one of
19 several payment methods used by Defendants and this log alone showed more than \$400,000 in
20 activity and 5885 separate payments made to affiliates. Defendants advertised that they paid
21 Affiliate Posters for each response that was received in response to fake ads that were posted.
22 Weeks Decl. ¶ 3, Ex. B. The individual amounts per response varied, and ranged from \$.05 to
23 \$.10 per response. Weeks Decl. ¶ 3, Exs. F, B. The PayPal log indicates that affiliate payments
24 were made to a large number of individuals with each payment representing an amount that was
25 greater than the payment for a single response. Thus, while the number of payments does not

26 ⁵ A "Posting Agent," is a third-party agent that offers to post Content on behalf of others. SAC,
27 Ex. A ¶ 8.

28 ⁶ See *craigslist, Inc. v. Naturemarket, Inc.* 694 F. Supp. 2d 1039, 1046-47, 1064 (N.D. Cal. 2010)
(awarding plaintiff \$840,000 in liquidated damages based on \$200 in liquidated damages for every ad
posted).

1 reveal the precise number of ads posted by Affiliate Posters, it is likely that many of the payments
 2 included responses to more than one ad and that some ads received no responses at all. As a
 3 result, a very conservative estimate of the number of ads posted is derived by assuming that each
 4 payment represents a minimum of at least one fraudulent ad posted on craigslist. This estimate of
 5 5885 ads is also a conservative estimate because Defendants used several other payment
 6 processors to pay Affiliate Posters, but, craigslist was unable to obtain complete financial
 7 information given the limited discovery to which it had access. Weeks Decl. ¶ 3, Ex. B.

8 Despite the admittedly incomplete information, craigslist has presented evidence to
 9 support an award of \$1,177,000 (5885 ads x \$200 per ad) as liquidated damages for Defendants'
 10 breach of contract. While significant, this amount is reasonable given both Defendants' wide
 11 ranging fraud as well as Temple's own admission some 12 months prior to temporarily stopping
 12 his activities that he had already made \$4,582,700 using his techniques. Weeks Decl. ¶ 3, Ex. E.

13 **3. An Order Directing the Transfer of Defendants' Domain Names That are** 14 **Used to Harm craigslist Is Appropriate and Necessary**

15 Despite craigslist's significant efforts to stop Defendants from continuing their injurious
 16 activity, they have persisted. Temple's residence outside the United States and Defendants'
 17 registration and use of the craigslist phishing website craigslistsecurity.com some 8 months after
 18 craigslist filed this lawsuit also raise the likelihood that Defendants may not comply with the
 19 terms of a permanent injunction without additional enforcement activity. It is very likely that
 20 Defendants will continue to exacerbate the harm to craigslist by continuing to use the craigslist
 21 related websites. When confronted with similar situations, courts have used their inherent
 22 authority and ordered the transfer of the domain names used by the defendant. *See Xcentric*
 23 *Ventures, L.L.C. v. Elizabeth Arden*, No. 2:08-cv-2299-HRH, Judgment (D. Ariz. October 22,
 24 2009) (attached as Weeks Decl. ¶ 10, Ex. O). In addition to enjoining the defaulting defendant
 25 from using plaintiff's trade name or copyrighted material, the *Xcentric Ventures* court ordered (1)
 26 the company hosting the website that contained the complained of content to terminate services
 27
 28

1 for the website until the content was removed, and (2) the transfer of the offending domain name
2 to the plaintiff.⁷ *Id.*

3 craigslist requested the transfer of these exact domain names in the SAC and Defendants
4 chose not to defend, thereby acquiescing to an order consistent with craigslist's prayer. SAC,
5 Prayer for Relief ¶ 6. Furthermore, the registrars of Defendants' craigslist related domain names
6 have agreed that they will comply with a court order directing the cancellation, transfer or change
7 in domain names. craigslist therefore requests that in addition to enjoining Defendants from
8 conducting any craigslist-related activities the Court also order the transfer of domain names used
9 by Defendants to perpetrate their craigslist-related schemes, including craigspimp.com,
10 craigspimptutorial.com, craigsguide.com, and craigslistsecurity.com.

11 **C. Craigslist Is Entitled to Attorneys' Fees and Costs**

12 Last, craigslist asks the Court to award its attorneys' fees and costs for pursuit of this
13 action. Attorneys' fees and costs may be awarded to craigslist under the Copyright Act, 17
14 U.S.C. § 505. Because Defendants concealed their identities and refused to comply with
15 craigslist's demands to stop their fraudulent activity, craigslist had no option but to file this
16 action. craigslist was then required to expend substantial time and resources to investigate,
17 discover and name Shui Yung Richard Tse, aka Eddie Temple and Eddie Temple Promotions
18 LTD as craigspimp.com's true operators and the proper defendants in this case. With Defendants'
19 unqualified default, craigslist has prevailed. Courts have awarded attorneys' fees and costs in
20 similar circumstances. *See Microsoft Corp. v. McGee*, 490 F. Supp. 2d at 883; *Divineo*, 457 F.
21 Supp. 2d at 967; *Coxcom Inc. v. Chaffee*, 536 F.3d 101 (1st Cir. 2008).

22 The time and effort expended by craigslist's attorneys in this matter were significant and
23 directly related to Defendants' intentional conduct, refusal to cease their illegal activities, and
24

25 ⁷ All domain name registrars for .com top level domains agree to comply with the provision of the
26 Uniform Domain Name Dispute Resolution Policy. *See Balsam v. Tucows, Inc.*, No. CV 09-03585, 2009
27 WL 3463923, at *1 (N.D. Cal. Oct. 23, 2009) (attached to DE 43 ¶ 5, Ex. F); *Sallen v. Corinthians*
28 *Licenciamentos LTDA*, 273 F.3d 14, 20 (1st Cir. 2001). That policy includes the provision that the
registrar agrees that it will cancel, transfer or otherwise make changes to domain name registrations upon
receipt of an order from a court of competent jurisdiction, requiring such action. Internet Corp. for
Assigned Names and Numbers, UDRP ¶ 3(b) (Oct. 24, 1999), available at
<http://www.icann.org/en/dndr/udrp/policy.htm> (last visited Oct. 29, 2010) (attached to DE 43 ¶ 6, Ex. G.)

1 efforts to evade detection. Defendants' continued abuse of craigslist and development of the
2 phishing website craigslistsecurity.com, which craigslist did not learn about until after filing its
3 original motion for default judgment resulted in additional fees associated with amending the
4 complaint, reserving Defendants, requesting entry of default and preparing and updating this
5 Motion for Default Judgment. craigslist's efforts are summarized in the December 15, 2010,
6 Declaration of James McCullagh in Support of craigslist's Motion for Default Judgment
7 ("McCullagh Decl."). *See* McCullagh Decl. ¶¶ 9, 12-27. craigslist has also submitted a matrix
8 summarizing the time expended per timekeeper per category of activity. *See* McCullagh Decl.
9 Ex. A. craigslist has incurred attorneys fees of \$159,765.53 and litigation costs of \$2,309.92,
10 McCullagh Decl. ¶¶ 42-43, and therefore requests a total fee and cost award in the total amount of
11 \$162,075.45.

12 IV. CONCLUSION

13 For the foregoing reasons, and in accordance with Rule 55(b)(2) of the Federal Rules of
14 Civil Procedure, plaintiff craigslist respectfully requests that the Court enter default judgment
15 against Defendants Shui Yung Richard Tse, aka Eddie Temple and Eddie Temple Promotions
16 Limited; enter a permanent injunction restraining Defendants and those acting in concert with
17 them from engaging in ongoing and future abuses of craigslist's property and infringements of
18 craigslist's legal rights; award statutory damages under the Copyright Act in a total amount of
19 \$300,000; award damages for breach of contract in a total amount of \$1,770,000, award
20 attorneys' fees and costs to craigslist in the amount of \$162,075.45, and issue an order directing
21 the transfer of Defendants' domain names that are used to harm craigslist.
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1 DATED: December 16, 2010

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